Supreme Court, U. S.
FILED
JUN 3 1977
MICHAEL RODAK, JR., CLERK

In The

Supreme Court of the United States

October Term, 1976

Nos. 76-1114, 76-1133, 76-1587

The People of the State of California and the Public Utilities Commission of the State of California, El Paso Natural Gas Company, the Federal Power Commission,
Petitioners,

v.

Southland Royalty Company, et al.,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS SOUTHLAND ROYALTY COMPANY, ET AL. IN OPPOSITION

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June 3, 1977

Byron of Houston, Inc. Printed in U.S.A.

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Petitioners,

v.

SOUTHLAND ROYALTY COMPANY, ET AL.,
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ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF RESPONDENTS SOUTHLAND ROYALTY COMPANY, ET AL. IN OPPOSITION

Respondents Southland Royalty Company, et al. (Southland Royalty)[1] submit the following brief in opposition to the petitions for writs of certiorari which have been filed by El Paso Natural Gas Company (El Paso), California,[2] and the Federal Power Commission (Commission). These

[1] This brief is filed on behalf of the following respondents: Southland Royalty Company; William Y. Penn, et al., Trustees; Nancy Elizabeth Penson; Penn Resources, Inc.; Elizabeth Hudson Penn; the Trustees under the will of Warren Wright; Exxon Corporation; and Texaco Inc.

[2] The People of the State of California and the Public Utilities Commission of the State of California.

petitions[3] seek review of a Fifth Circuit decision that, as a matter of "black letter law", the lessee under a fifty-year fixed-term oil and gas lease could not "legally deal in or dedicate" to interstate commerce natural gas it did not own — the gas owned and produced by the mineral fee owners after the expiration of the lease.

QUESTION PRESENTED

Did the lessee under a fifty-year fixed-term oil and gas lease, by making interstate sales of its leasehold gas, dedicate to interstate commerce gas it did not own — the gas owned and produced by the mineral fee owners after the expiration of the lease?

STATEMENT OF THE CASE

In 1925 Gulf Oil Corporation (Gulf) entered into an oil and gas lease with W. N. Waddell, et al. (the Waddell Lease) covering certain acreage in Crane County, Texas. The lease expressly provided that it "shall not remain in force longer than fifty years from" July 14, 1925, the date of execution of the lease. (J. A. 136).[4]

In 1951 Gulf entered into a contract with El Paso for the sale of "Seller's surplus residue gas" — that is, the gas which Gulf had the right to sell after gas from its various oil and gas leases, including the Waddell Lease, had been processed in Gulf's plant. (J.A. 43). By this contract Gulf did not "purport to dedicate" gas to be produced after the expiration of the Waddell Lease. (J.A. 457-58).

In 1954, following this Court's *Phillips* decision[5], Gulf applied to the Commission for a certificate of public convenience and necessity authorizing its sale of surplus residue gas to El Paso, specifically describing the sale in terms of the 1951 contract (J.A. 2-4). Gulf did not seek a cer-

[3] Hereinafter cited as "El Paso . . .", "Calif. . . .", and "FPC . . ."

[4] Citations in the form "J.A." are to the Joint Appendix in the court below.

[5] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

tificate limited in duration, since Gulf expected to have "Seller's surplus residue gas" available for sale to El Paso from sources other than its Waddell Lease, as it in fact does have.[6] The Commission authorized Gulf's sale "as described in the application." (J.A. 26-27, 33, 37).

In 1973, the Supreme Court of Texas denied Gulf's claim that it had the right to continue beyond July 14, 1975 the production, ownership and sale of hydrocarbons produced from the leased acreage. The Court held that the language of the Waddell Lease provides "a plain and certain answer to the question of when the lease terminates."[7] Accordingly, on July 14, 1975, Gulf's lease terminated by operation of law and Southland Royalty came into present enjoyment of its mineral fee estate.[8]

In January, 1975 El Paso also tried to circumvent the limitations on Gulf's leasehold rights. El Paso petitioned the Commission to require Southland Royalty to sell its gas to El Paso rather than to the intrastate pipeline with which Southland Royalty had contracted.[9] The Commission consolidated El Paso's petition with one filed by Texaco Inc. with respect to its interest in acreage subject to another fifty-year fixed-term lease (the Goldsmith Lease) held by Gulf, which was also about to expire. (J.A. 360-361).[10]

[6] Gas produced from sources other than the Waddell Lease accounted for more than half of the gas sold by Gulf to El Paso. (*See* J.A. 123). Thus, regardless of the expiration of the Waddell Lease, Gulf continues to sell and deliver substantial quantities of "Seller's surplus residue gas" under its contract with El Paso.

[7] *Gulf Oil Corp.* v. *Southland Royalty Co.*, 496 S.W.2d 547, 552 (Tex. 1973).

[8] Southland Royalty Company acquired its share of the mineral fee interest (47%) from the Waddells in 1926, and the other respondents also acquired their interests long before the expiration of Gulf's lease.

[9] Prior to the expiration of Gulf's lease, Southland Royalty had contracted with Intratex Gas Company, an intrastate pipeline serving, *inter alia*, the natural gas distributor for the City of Houston, Texas for the sale of the mineral fee gas, to begin when Southland Royalty came into enjoyment of its interest on July 15, 1975.

[10] The orders of the Commission, the decision of the court below and the petitions herein all concern the Goldsmith Lease as well

By orders issued July 11, 1975 and September 3, 1975 the Commission held that Southland Royalty could not sell its gas to the purchaser of its choice without obtaining abandonment authorization from the Commission under Section 7(b) of the Natural Gas Act, 15 U.S.C. § 717f(b). According to the Commission, Southland Royalty's gas had been dedicated to interstate commerce by Gulf's interstate sale of the gas attributable to Gulf's limited leasehold interest. The Commission recognized that its decision amounted to a "holding that the leaseholders, Gulf, et al., had power to encumber the property with the result that the mineral lease [sic] owners are forced to enter into an interstate sale against their will." (J.A. 712).

On appeal, the Fifth Circuit reversed. *Southland Royalty Co.* v. *FPC*, 543 F.2d 1134 (5th Cir. 1976). The court held that Southland Royalty's gas was not subject to Gulf's interstate dedication of Gulf's leasehold gas.[11] The court rejected the Commission's claim that Gulf was empowered to dedicate Southland Royalty's gas, on the ground that:

> It is black letter law that a person holding a present interest in real property which is limited in duration cannot create an estate which will extend beyond the term of his interest. 2 R. POWELL, THE LAW OF REAL PROPERTY ¶ 247 [1] (Rohan ed. 1967). *See also*, eg., 1 H. TIFFANY, THE LAW OF REAL PROPERTY § 153 (3rd ed. 1939); 2 H. WILLIAMS & C. MEYERS, OIL & GAS LAW § 332 (1975).

543 F.2d at 1137. In this connection, the court noted that Southland Royalty was not a successor to Gulf and therefore Gulf had "no right to encumber or restrict" Southland Royalty's gas. *Id.* at 1138.

as the Waddell Lease, but there are no material differences of fact between the two leases and all parties have discussed the case in terms of the Waddell Lease, as will be done herein.

[11] Contrary to the Commission's statement (FPC 6), the court below did not hold that Southland Royalty could "abandon" interstate sales of gas without Commission authorization. Instead the court held that Southland Royalty's gas had not been dedicated to interstate commerce, 543 F.2d at 1136, so there was nothing for Southland Royalty to "abandon".

California, El Paso and the Commission filed petitions for certiorari. Pending the disposition of these petitions, the Fifth Circuit has deferred issuance of its mandate. As a result, Southland Royalty is involuntarily selling its gas to El Paso under compulsion of the Commission's orders and pursuant to an interim protective order.[12]

REASONS FOR DENYING THE WRITS

Petitioners assert that the question presented is whether Southland Royalty can "withdraw" from interstate commerce gas that has been dedicated by Gulf. They then claim that an affirmative answer violates established construction of the Natural Gas Act and of the abandonment provision of the Interstate Commerce Act, "releases" great quantities of dedicated gas and may have other adverse regulatory consequences. But they misstate the question presented to and decided by the Fifth Circuit — whether Gulf had ever dedicated Southland Royalty's gas.

The court of appeals' decision that Gulf never dedicated Southland Royalty's gas is based on "black letter law" and is fully consistent with the Natural Gas Act cases relied on by the petitioners. Cases construing the abandonment provision of the Interstate Commerce Act, far from conflicting with the decision below, offer additional support for it. The court of appeals' decision will not "release" any dedicated gas or have other adverse consequences. It simply reaffirms, on virtually unique facts, a fundamental principle: no one can legally deal in or dedicate property he does not own.

[12] Contrary to the Commission's statement (FPC 6, fn. 6) these deliveries are not "continuations" of Gulf's deliveries. Southland Royalty's sale is a new sale, and an involuntary one, undertaken expressly "without prejudice" to this litigation, under the terms of a protective order entered by the Fifth Circuit.

1. Petitioners Misstate the Question Presented.

Petitioners all rest their arguments for review on the "fundamental premise of the [Natural Gas] Act that, once gas is dedicated to interstate commerce . . . there can be no withdrawal of that supply from continued interstate movement without Commission approval" under Section 7(b). (FPC 7; *see also* Calif. 8, El Paso 6). Each claims that the decision below "challenges" or "threatens" this fundamental principle, and thereby presents the question of whether Southland Royalty can "withdraw" dedicated gas from interstate commerce, "divert" dedicated gas to intrastate commerce, and "terminate sales" of dedicated gas without abandonment authorization. (FPC 2, El Paso 2, Calif 3).

The problem with this "fundamental premise" is that it is completely irrelevant, and is in no way challenged or threatened by the decision below. The court of appeals was not faced with a question of whether Southland Royalty could withdraw dedicated gas from interstate service. The court was faced with the question of whether Gulf had dedicated Southland Royalty's gas in the first place.[13] The court did not hold that Southland Royalty could withdraw its gas, "once dedicated." It found that Southland Royalty's gas had never been "once dedicated." Accordingly, its decision does not present any question of whether Southland Royalty can "withdraw," "divert," or "terminate sales" of any gas that has once been dedicated. The only question presented is whether Gulf could and did "once dedicate" Southland Royalty's gas — gas that Gulf did not own.

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[13] The Court stated the question presented as follows:

> Does the lessee under a 50-year fixed-term mineral lease, by making certificated sales of leasehold natural gas in interstate commerce, thereby dedicate to interstate commerce the gas which remains in the ground at the end of the 50th year?

543 F.2d at 1136.

2. The Decision Below Is Consistent With Established Construction of the Natural Gas Act.

The court of appeals properly noted that the question presented was one to which "black letter law" applies: a person holding a present interest in real property, which is limited in duration, cannot create an estate enduring beyond the term of his interest.[14] It follows from this "self-evident principle"[15] that "a person cannot dedicate interests over which he has no control."[16] Thus, "under well established concepts of property law, Gulf could not legally deal in or dedicate" Southland Royalty's gas. 543 F.2d at 1137. Although this case arises in a Texas context, the principles relied on by the court of appeals are not vagaries of local law, but universal principles of Anglo-American jurisprudence.[17]

The Natural Gas Act cases that are said to be "contrary" to these universal principles all stand for the proposition that *once* a producer's gas has been dedicated to interstate commerce, "there can be no withdrawal of that supply from continued interstate movement without Commission approval." *Atlantic Refining Co.* v. *Public Service Commission* [*CATCO*], 360 U.S. 378, 388-89 (1959). As previously noted, Southland Royalty's gas was not "once dedicated". Accordingly, this proposition is simply not relevant, and neither are the cases that petitioners cite for it.[18]

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[14] *See* 543 F.2d at 1137, *citing* 2 R. POWELL, THE LAW OF REAL PROPERTY § 247[1] (Rohan ed. 1967).

[15] 1 H. TIFFANY, THE LAW OF REAL PROPERTY § 153 at 247 (3rd ed. 1939).

[16] 4 H. TIFFANY, THE LAW OF REAL PROPERTY § 1100 (3rd ed. 1975).

[17] Nor (contrary to El Paso's statement, at p. 12) is this decision dependent upon the nature under Texas law of a mineral lessee's property interest. Whether the lessee's interest is deemed realty or personalty, a chattel real or a profit a prendre, he can dedicate only the gas that is attributable to his interest.

[18] *Sunray Mid-Continent Oil Co.* v. *FPC*, 364 U.S. 137 (1960); *Sun Oil Co.* v. *FPC*, 364 U.S. 170 (1960); *California* v. *Lo-Vaca Gathering Co.*, 379 U.S. 366 (1965); *Hunt* v. *FPC*, 306 F.2d 334 (5th Cir. 1962), *rev'd*, 376 U.S. 515 (1964); *Mitchell Energy Corp.* v. *FPC*, 533 F.2d 258 (5th Cir. 1976); *Transcontinental Gas Pipe Line*

Because of the attention petitioners devote to it, a brief review of one of these cases, *Sunray*, may be appropriate, even though the court below specifically addressed and distinguished it. *See* 543 F.2d at 1138. Sunray had applied for a 20-year certificate, to authorize the sale it proposed under a 20-year contract. The Commission tendered a certificate unlimited in duration, which Sunray accepted and under which it commenced deliveries, though challenging the Commission's authority to issue such a certificate. This Court held that the Commission had the power to issue Sunray an unlimited certificate, and that by choosing not to "avail itself of its undoubted right to stand firm on its own application, and reject the proffered certificate," 364 U.S. at 141, Sunray was bound to the terms of the certificate it had accepted. Accordingly, Sunray would have to continue to deliver its gas pursuant to the certificate, once its contract expired. *Id.* at 156.

Petitioners claim that the expiration of Gulf's lease is like the expiration of Sunray's contract (FPC 10-15, Calif. 14-20, El Paso 10-11), but this is plainly wrong. First, as noted by the court of appeals, 543 F.2d at 1135, this Court did not hold that Sunray could dedicate gas it did not own, which is what petitioners assert that Gulf did in this case. Second, unlike Sunray, Southland Royalty has never had an opportunity to "avail itself of its undoubted right" to choose its purchaser in the first instance; on the contrary, the Commission itself has conceded that, under its orders, Southland Royalty would be "subject[ed] to the dedication made by the leaseholders" and thereby "forced to enter into an interstate sale against [its] will." (J.A. 712).

Corp. v. *FPC*, 488 F.2d 1325 (D. C. Cir. 1973), *cert. denied*, 417 U.S. 921 (1974); *United Gas Pipe Line Co.* v. *FPC*, 350 F.2d 689 (5th Cir. 1965), *aff'd*, 385 U.S. 83 (1966). In each, it was held that *once* a natural gas company subject to the Commission's jurisdiction had dedicated its gas to interstate commerce, its gas could not be withdrawn without abandonment authorization, regardless of the terms of its contract with its pipeline purchaser or a voluntary assignment of its rights to another producer. In none of these cases, or any other case, did this Court, or any other court, hold that under the Natural Gas Act a producer may dedicate gas it does not own.

3. The Decision Below Is Consistent With Established Construction of the Interstate Commerce Act.

Among the petitioners only the Commission makes a new argument. The Commission first characterizes the decision below as holding that "the reversioners may quit the interstate market without Commission authorization" (FPC 15) under Section 7(b), the abandonment provision of the Natural Gas Act.[19] The Commission then claims that such a decision is contrary to this Court's construction of Section 1(18), the abandonment provision of the Interstate Commerce Act[20] under which the Interstate Commerce Commission (ICC) regulates railroads. Although it was not raised in the orders reversed by the court of appeals and was not presented to that court, this new argument does nothing to disturb the correctness of the decision below.

To begin with, the Commission is simply wrong in asserting that the court below held that Southland Royalty "may quit the interstate market" without authorization under Section 7(b). The question decided below and presented here is whether Gulf dedicated Southland Royalty's gas to the interstate market and thereby made Southland Royalty an involuntary "natural gas company" subject to Section 7(b). It is uncertain how much light cases construing Section 1(18) of the Interstate Commerce Act shed on this question.[21] But when the analogous question was raised in the context of Section 1(18), the result was the same as in the court below — the regulated activities of a lessee do not subject a nonregulated lessor to the agency's jurisdiction.

[19] 15 U.S.C. 717f(b).

[20] 49 U.S.C. 1(18), which was added by Section 402 of the Transportation Act of 1920, 41 Stat. 477-478.

[21] The Commission erroneously claims (FPC 15) that the two sections are "parallel", on the grounds that Section 7(b) "originated with" and was "modeled on" the proposed Benton amendment to H.R. 11662, which Benton said was drawn from Section 1(18). The Benton amendment to H.R. 11662 was never adopted. Section 7(b) actually originated with an earlier bill, H.R. 5423, 74th Cong., 1st Sess., § 305(b), whose language is much closer to that of Section 7(b) than is the language of the Benton amendment. Legislative history aside, the two statutes are plainly not

The leading case is *Meyers* v. *Famous Realty*, 271 F.2d 811 (2nd Cir. 1959), *cert. denied* 362 U.S. 910 (1960). There, in reliance on the two cases[22] cited here by the Commission, it was argued that Famous Realty, the lessor of the realty and tracks formerly used by the Jay Street Railroad, had to "continue" operation of the line. The Second Circuit noted that the grantors in those cases were already themselves "carriers by railroad" subject to ICC jurisdiction when they granted rights to other carriers; as such, they were subject to a "revived obligation" under Section 1(18) with respect to their jurisdictional facilities.[23] However, the court continued, "none of the decisions cited hold or imply that a noncarrier, by merely leasing its properties to a carrier, becomes a 'carrier by railroad'." Accordingly, the court held that Famous Realty had no obligation to continue the Jay Street's operations "when its lease expires." 271 F.2d at 814.[24]

"parallel". Substantial differences between regulation of railroad service and regulation of interstate sales of natural gas are embodied in the jurisdictional provisions of the two acts. *Compare* Interstate Commerce Act Section 1(3) *with* Natural Gas Act Section 1(b).

[22] *Thompson* v. *Texas-Mexican R. Co.*, 328 U.S. 134 (1946) and *Smith* v. *Hoboken R. Co.*, 328 U.S. 123 (1946). The Commission interprets these cases as holding that a private landowner, not otherwise subject to ICC jurisdiction, must "continue" railroad service commenced by an ICC-regulated railroad upon expiration of a lease to the railroad.

[23] That is, *Tex-Mex* and *Smith* were inapposite in *Meyers* (and are inapposite here) because the grantors themselves devoted their properties to interstate service, before granting rights to use the same properties to other "carriers by railroad." The ICC decisions cited by the Commission likewise involve agreements between two "carriers by railroad" with respect to the same tracks, and are equally inapposite. *See Bush Terminal Railroad Co.*, 342 ICC 34 (1971).

[24] Similarly, Judge Friendly, writing for a three-judge panel, recognized that the doctrine of requiring a lessor to obtain a Section 1(18) certificate "applies only when the lessor was a 'carrier by railroad', *see* 49 U.S.C. § 1(18), when the lease was made." *City of New York* v. *U.S.*, 337 F.Supp. 150 (E.D.N.Y. 1972).

Similarly, in the context of the Natural Gas Act, no cases hold or imply that a landowner such as Southland Royalty becomes a "natural gas company" by merely leasing its properties to a "natural gas company" such as Gulf. In fact, it is settled that the lessor of an undeveloped oil and gas lease is not a "natural gas company" subject to Commission jurisdiction under the Natural Gas Act either when it grants a lease or if the lessee then discovers gas and sells it in interstate commerce. The Natural Gas Act simply does not contain "any basis for reaching out to cover the landowner's lease". *Mobil Oil Corp.* v. *FPC*, 463 F.2d 256, 263 (D.C. Cir. 1971), *cert. denied* 406 U.S. 976 (1972).

4. The Decision Below Concerns Virtually Unique Facts of Limited Importance.

The court of appeal's decision is not only manifestly correct, but also plainly limited in its significance. It turns on the express limitations of Gulf's fifty-year fixed-term lease. Such term oil and gas leases are extremely rare, having "long been in disuse" by 1928, and "of no practical importance."[25] For this reason, the decision below is of direct concern only to a handful of other similarly situated parties,[26] and involves only a relatively small amount of natural gas.[27]

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[25] Walker, *The Nature of the Property Interests Created by an Oil and Gas Lease in Texas*, 7 TEXAS L. REV. 1, 15 (1928). *See also* 3 H. WILLIAMS, OIL & GAS LAW § 601.1 (1975 ed.); E. BROWN, LAW OF OIL & GAS LEASES § 5.01 (2d ed. 1973).

[26] Although the Commission suggests that "numerous" other fixed-term leases are involved (FPC 19), in fact, as California notes (Calif. 9-10), there are only three other such cases, on which the Fifth Circuit is deferring decision pending the disposition of this case. California and the Commission attempt to create the impression of a larger number of cases by citing separately each order which the Commission has issued with respect to different aspects of these cases, or each of the appeals taken by the parties to them. *See* Calif. 10, fn. 4, FPC 19, fn. 19.

[27] The daily production at issue here is less than 0.08 of 1% of average daily U.S. marketed natural gas in 1975 (calculated from

Virtually all producers of natural gas operate pursuant to leases which continue for a stated primary term *and* "as long thereafter as oil, gas or other minerals are produced [from the subject acreage] in paying quantities."[28] Thus, in the ordinary case, when a lessee commences an interstate sale of leasehold gas, he owns and therefore has the right to sell gas as long as the reserves last.[29] The question in this case — of whether a producer can dedicate gas he does not own — cannot even arise.

Petitioners try to show a need for this Court's review by arguing that the decision below threatens the Commission's jurisdiction over natural gas that has been dedicated to interstate commerce, and its ability to enforce the abandonment provisions of the Natural Gas Act applicable to such dedicated gas. Specifically, they state that it will "release" large quantities of dedicated gas from the interstate market without abandonment authorization. (FPC 6, Calif. 8, El Paso 9). As previously noted, this "argument" merely begs the question presented, which is whether Southland Royalty's gas was ever dedicated.

Petitioners also argue that the decision below should be reviewed because of its potential effect on other pending appeals, especially *Phillips Petroleum Co.* v. *FPC*, 10th Cir. No. 76-1216. In fact, on May 17, 1977, the Tenth Circuit handed down a decision in *Phillips* which confirms the limited scope of the decision below. In affirming Commission orders holding Phillips bound as the "successor" to another

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J.A. 123 and "Natural Gas Production and Consumption: 1975," Bureau of Mines, prepared October 4, 1976). Nor is this gas "critically needed" (FPC 6) for the California market served by El Paso since, as Califor . admits, additional gas would go to serve "low priority customers" there. (Calif. 7).

[28] 3 H. WILLIAMS, OIL & GAS LAW § 603 (1975 ed).

[29] Under the usual oil and gas lease, the producer's leasehold estate "customarily continues indefinitely for the life of the field." 3 H. WILLIAMS, OIL & GAS LAW § 603 (1975 ed.).

producer's dedication of the gas attributable to the same leasehold rights,[30] the Tenth Circuit explicitly distinguished the decision below. The Tenth Circuit noted that in *Southland Royalty*, 543 F.2d at 1138, the Fifth Circuit had recognized that a "successor" is bound by the burdens on his rights created by the producer from whom he acquires his rights. But since Southland Royalty never acquired, succeeded to, or had any interest in Gulf's leasehold rights, and since its entirely separate mineral fee estate was never owned and could not have been encumbered by Gulf, Southland Royalty is not a "successor" to Gulf. *Id.*[31]

Finally, petitioners speculate that, though limited narrowly on its facts, the decision below will "foster" short-term leases as a means of enabling producers to evade the Commission's jurisdiction. (El Paso 8, Calif. 21, FPC 7, 14-15). Petitioners offer no support whatsoever for such speculation, for obvious reasons. Why would any producer take a short-term mineral lease, e.g., a 2-year lease, pay lease bonus money, and invest several hundred thousand dollars in drilling, if his entire investment will be forfeited at the end of the two year period? Termination of a mineral lease is simply not in the lessee's economic interest. This is precisely why producers had stopped using fixed-term leases by 1928.[32]

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[30] The facts were as follows: Pursuant to a contract, Phillips had assigned its one-half interest in the Young lease to Goldston, which then drilled and discovered gas. Phillips retained a contractual option to require Goldston to reconvey 40% of Phillips' interest in the Young lease back to Phillips when the well paid out. Phillips exercised this option and tried to sell the gas attributable to its interest in the Young lease to Goldston's interstate purchaser on identical terms and conditions – except for a higher price. The Commission held that Phillips was Goldston's successor, and bound by the terms of Goldston's dedication of the Young leasehold gas. The Tenth Circuit agreed.

[31] Petitioners' suggestion that this case should be reviewed because the pending appeal in *Harrison* v. *FPC*, 5th Cir. No. 76-4318, depends upon it is equally erroneous. The *Harrison* case involves a threshhold question of whether a producer who sought and obtained a certificate for the sale of "gas produced from reserves underlying leases in Sections 11 and 29" dedicated only his interests in those sections, or also his interests in four other sections.

[32] *See* 3 H. WILLIAMS, OIL & GAS LAW § 601.1 at pp. 2-3 (1975 ed.).

CONCLUSION

For the foregoing reasons, the petitions of California, El Paso and the Commission for writs of certiorari present no question warranting review of the decision below, and should be denied.

Respectfully submitted,

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